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No. ———

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND ITS LOCAL 449,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether Section 8(b)(1)(A) of the National Labor Relations Act may reasonably be construed as prohibiting maintenance and enforcement by a labor union of a provision in its constitution limiting the time and manner in which members of the labor union may resign from union membership.

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v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioners, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (hereafter the "UAW") and its Local 449 (hereafter collectively the "Union") respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered on March 10, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit is reported at 865 F.2d 791 (6th Cir. 1989), and is reprinted in the Appendix hereto, App. 1a, infra. The

March 10, 1989 Order of the Sixth Circuit Denying Petition for Rehearing En Banc is unreported and is reprinted in the Appendix hereto at App. 44a, infra. The March 5, 1987 Decision and Order of the National Labor Relations Board (hereafter "Board" or "NLRB") is reported at 283 NLRB No. 30 (1987) and is reprinted in the Appendix hereto at App. 13a, infra. The June 2, 1987 Order of the NLRB denying the Union's Motion for Reconsideration is unreported and is reprinted in the Appendix hereto at App. 35a, infra. The September 25, 1987 Supplemental Decision and Order of the NLRB is reported at 285 NLRB No. 149 (1987) and is reprinted in the Appendix hereto at App. 37a, infra.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on March 10, 1989 and is reprinted in the Appendix hereto at App. 46a, infra. A petition for rehearing *en banc* was timely filed, and was denied on March 10, 1989. The jurisdiction of this Court to review the judgment of the Sixth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (29 U.S.C. § 151 et seq.), are as follows:

> Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.
>
> * * * *

> Section 8(b). It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of memberships; * * *.

STATEMENT OF THE CASE

A. The Board Proceedings

Petitioner UAW is a labor organization which maintains and enforces as part of its Constitution a rule governing resignations by its members from their membership in the Union. That rule, set forth as Article 6, Section 17 of UAW's Consitution, provides that UAW members may resign from the UAW only if (i) the resignation is submitted during an annual ten-day window period; (ii) the member is not in arrears in his or her financial obligations to the union, and (iii) the member has no internal union charges pending against him or her. Article 6, Section 17 further requires that such resignations be in writing, and be sent by registered or certified mail to the financial secretary of the member's local union. This resignation rule has been maintained and enforced by the UAW as part of its Constitution since 1947.[1]

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[1] Article 6, Section 17 of the UAW Constitution in its entirety reads as follows:

> A member may resign or terminate membership only if s/he is in good standing, is not in arrears or delinquent in the payment of any dues or other financial obligation to the International Union or to her/his Local Union and there are no charges filed and pending against her/him. Such resignation or termination shall be effective only if by written communication, signed by the member and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union a fixed by this Constitution, whereupon it shall become effective sixty (60) days

In 1983, eight members of Petitioner UAW Local 449 filed internal charges against forty-one other members of UAW Local 449 who had tendered their resignations from the UAW and had crossed a UAW picket line to perform work against the members' mutual employer. The resignations were untimely under Article 6, Section 17 of the UAW Constitution.

As a result of the filing of these internal union charges, an unfair labor practice charge was filed against the Union Petitioners. After trial before an administrative law judge, the NLRB issued a Decision and Order on March 5, 1987 finding that the Union Petitioners had violated Section 8(b)(1)(A) of the NLRA, 29 U.S.C. § 158(b)(1)(A), by (i) allowing the internal union charges to be filed against the forty-one UAW Local 449 members, and by (ii) maintaining and enforcing a provision in the UAW Constitution restricting the time and manner in which such members may resign from UAW membership.

After the Union filed a petition for review of the Board's March 5, 1987 Decision and Order with the Sixth Circuit, the Board, acting *sua sponte*, issued its September 25, 1987 Supplemental Decision and Order herein. In this Supplemental Decision, the Board withdrew its finding that the Union had violated Section 8(b)(1)(A) by entertaining internal union charges against the forty-one Local 449 members who had crossed their Union's picket line after tendering to the Union a request to resign from UAW membership. The Board did so based

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after the end of such fiscal year; provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and Union to check off the membership dues of such member, then such resignation shall become effective upon the effective termination of such authorization, or upon the expiration of such sixty (60) day period, whichever is later. (App. 3a-4a.)

on its acceptance of the UAW's claim that under the UAW Constitution persons found guilty of internal union charges may not be fined, but may only be reprimanded, suspended or expelled from union office, or suspended or expelled from the UAW.[2] According to the Board, given the absence of any provision in the UAW's Constitution for fining union members, the limited penalties provided for under UAW's Constitution—reprimand, suspension or expulsion—could not be said to restrain or coerce employees in the exercise of their Section 7 rights. Therefore, according to the Board, the Union was privileged to entertain the charges filed against the forty-one UAW Local 449 members who had tendered resignations and crossed the Union's picket line, and privileged to assess against them any of the penalties made available under the UAW's Constitution, all without any violation of Section 8(b)(1)(A).[3]

The Board's Supplemental Decision and Order did not, however, abandon the Board's earlier finding that the Union's mere maintenance and enforcement of its rule regulating the time and manner of membership resignations violated Section 8(b)(1)(A). Based on this finding, the Board ordered the UAW to cease maintenance and enforcement of Article 6, Section 17 nationwide, and further ordered the UAW to expunge Article 6, Section 17 from its Constitution. The effect of this Order is that the UAW may not apply Article 6, Section 17 to any of its members for any purposes—strike related or not—

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[2] At its 1983 Convention, the UAW amended the provisions of its Constitution to eliminate all provisions for the assessment of fines against those found guilty upon trial on internal union charges, and limited the penalties which may be assessed against the guilty party to reprimand, suspension or expulsion from UAW office, or suspension or expulsion from UAW membership. (See, App. 24a, 38a.)

[3] In fact, the Union never tried any of the forty-one UAW Local 449 members on the internal union charges, or penalized them in any way for the conduct alleged in those charges. (App. 3a.)

whether those members are employed in the UAW Local 449 bargaining unit in which the unfair labor practice charge in this case originated, or in any other bargaining unit.

B. The Decision of the Court of Appeals

The Sixth Circuit enforced all of the Board's Order directed to Article 6, Section 17 of the UAW Constitution, save for that portion of the Board's Order which directed the UAW to cease maintenance and enforcement of that provision's terms requiring membership resignations to be in writing and sent to a designated officer of the local union. The Court found support for its decision in this Court's five to four decision in *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), and in the Board's decision in *International Association of Machinists & Aerospace Workers, Local Lodge 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984). According to the Court, the Board properly concluded that the UAW's resignation rule—which concededly has no impact on the employment relationship—nonetheless violates Section 8(b)(1)(A) because it "impairs the statutory policy of voluntary unionism", App. 11a, infra, and "restrain[s] and coerce[s] . . . members in the exercise of their right to abstain from union membership and collective activity." App. 12a, infra.

In so holding, the Court rejected the position of the UAW, which argued, as this Court has previously held, that Section 8(b)(1)(A) was not intended by Congress to establish "any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status . . ." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967). The Sixth Circuit also rejected the UAW's claim that *Pattern Makers* does not support the Board's position in this case, despite the fact that the *Pattern Makers* majority found Section 8(b)(1)(A) ap-

plicable only because the union in that case had assessed fines against its members, which fines were found by this Court to have a direct impact on the employment rights of the members. 473 U.S. at 106-107. In the Sixth Circuit's view, notwithstanding this Court's reliance on such fines in *Pattern Makers* as its basis for finding that the employment status of the union members in that case had been affected, and that Section 8(b)(1)(A) therefore applied, and notwithstanding the lack of any finding here that the employment status of UAW members is affected in any way by the UAW's resignation rule, Section 8(b)(1)(A) nonetheless governs that rule and supports the Board's conclusion that that rule unlawfully restrains and coerces employees.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals and of the NLRB that Section 8(b)(1)(A) prohibits the UAW's maintenance and enforcement of its 1947 rule regulating the time and manner in which members of the UAW may resign from the UAW is erroneous and constitutes a serious departure from principles that this Court has consistently applied in determining the scope of union conduct which Congress intended to regulate by enacting Section 8(b)(1)(A). Moreover, the question decided by the court below is an importnat one: its decision would expand the scope of Section 8(b)(1)(A) to internal union matters—such as the Union's rule here—which have no bearing on the employment relationship of union members.

1. In *Pattern Makers*, this Court found permissible a construction of Sections 7 and 8(b)(1)(A) of the NLRA which barred a union from fining its members in an amount equivalent to their wages after they had tendered resignations from union membership untimely under the union's constitution, and then crossed the union's picket line. But nothing in *Pattern Makers* indicates that this Court has abandoned its earlier holding in cases such as

NLRB v. Allis-Chalmers Mfg. Co., *supra*, that Congress did not intend Section 8(b)(1)(A) "to interfere with the internal affairs or organization of unions . . ." 388 U.S. at 187, quoting 93 Cong. Rec. 4272 (1947) (Statement of Senator Ball). See also, *id.* at 187-90. Instead, as explained in *Allis-Chalmers*, in enacting Section 8(b)(1)(A) "Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's regulations to affect a member's employment status." 380 U.S. at 195. The distinction was reiterated in *Pattern Makers*, where the majority observed that "[t]he Court has emphasized that the crux of *Allis-Chalmers*' holding was the distinction between 'internal and external enforcement of union rules' . . .", 473 U.S. at 102, citing *Scofield v. NLRB*, 394 U.S. 423, 428 (1969). See also *NLRB v. Boeing Co.*, 412 U.S. 67, 73 (1973).

In *Pattern Makers*, this Court concluded that the Board permissibly found the union conduct at issue to be other than strictly "internal", and therefore subject to regulation under § 8(b)(1)(A). In doing so, this Court rejected the union's claim that the conduct in question was insulated from regulation under Section 8(b)(1)(A) because it had no impact upon the members' employment relationship. While not denying the well-established statutory significance of this distinction if made out on the facts, this Court found that the *Pattern Makers* union's conduct inevitably did affect the employment relationship. As this Court explained:

> [the unions] assert that [the restriction on resignation] does not interfere with workers' employment rights because offending members are not discharged, but only fined. We find this argument unpersuasive, for a union has not left a "worker's employment rights inviolate when it exacts (his entire) paycheck

> in satisfaction of a fine imposed for working." Wellington, *Union Fines and Workers' Rights*, 85 Yale L.J. 1022, 1023 (1976)." [Id. at 107, emphasis supplied.]

Thus, the *Pattern Makers*' majority found the otherwise internal nature of the *Pattern Makers* union's resignation rule was entirely vitiated by the fact that this rule was applied by the union in order to take away all the wages earned by employees, through the mechanism of fines against those employees who crossed the union's picket line. In other words, this Court in *Pattern Makers* found the union's conduct had a substantial impact on the employees' "employment rights," and was thus not limited to strictly internal union matters since the union's rules as applied had the impact of denying employees their entire employment earnings. As such, the union's conduct was subject to regulation under Section 8(b)(1)(A), and in violation of that section.

No basis exists for such a finding here for a simple reason: under the UAW's Constitution, the UAW cannot levy fines against its members (or assess any other discipline affecting their employment relationship). Indeed, as the Board found in its Supplemental Decision below, the discipline which *is* available under the UAW Constitution—reprimand or suspension or expulsion from union office or union membership—is non-coercive within the meaning of Section 8(b)(1)(A) and cannot be said to have any impact on the employment relationship, or any relationship other than that of the employee to the Union. See, App. 38a. In other words, contrary to the situation in *Pattern Makers*, the UAW's Constitution here provides no basis to conclude that the Union's rules regarding discipline and resignation can have any impact on the employment relationship in any manner that implicates Section 8(b)(1)(A).

Given the above, there was no basis here for the Board and the Court of Appeals to find that the UAW's resignation rule is other than strictly internal and is therefore subject to regulation under Section 8(b)(1)(A). All the UAW rule here does is provide that members of the UAW must follow certain procedural steps at certain particular times in order to resign from membership. Since the rule which establishes these procedural steps has no impact on any employment terms of any member, that rule is beyond the intended scope of Section 8(b)(1)(A).

2. The decisions of the Board and the Court of Appeals below are inconsistent with this Court's decisions in *Allis-Chalmers*, *Scofield*, *Boeing* and *Pattern Makers* and present an important question, *viz.*, whether the scope of Section 8(b)(1)(A) may properly be expanded to provide for NLRB regulation of purely internal union resignation rules having no impact on the employment relationship. UAW submits that this Court should grant the Petition in order to resolve this question.

As stated by the Court in *Scofield*, Section 8(b)(1)(A), along with Sections 8(b)(2), 8(a)(1), 8(a)(2) and 8(a)(3) "form a web, of which Section 8(b)(1)(A) is only a strand, preventing the union from inducing the employer to use the emoluments of the job to enforce the union's rules." 394 U.S. at 429. Accord: *Allis-Chalmers*, *supra*, 388 U.S. at 191, 192 and 195. Congress understood—as the Board and the Court of Appeals below did not—that there is a world of difference between union actions enforceable against all employees through sanctions applied by the employer (including loss of employment), and union actions that are enforceable only through internal union proceedings and do not affect job rights. Contrary to the views of the NLRB, this Court in *Pattern Makers* likewise understood this distinction, for it found the union rule at issue there subject to regulation under Section 8(b)(1)(A) only because it has an impact on employment rights equivalent to union-induced em-

ployer sanctions, in the form of monetary fines imposed by the union in an amount equal to the employees' wages. Absent such conduct affecting employment, an internally enforced union rule—such as the UAW's resignation rule here—does not come within the reach of Section 8(b)(1)(A).

The Court of Appeals below, along with the Court of Appeals for the Seventh Circuit in *NLRB v. Local 73, Sheet Metal Workers*, 840 F.2d 501 (7th Cir. 1988), have in our view misread *Pattern Makers* as invalidating all union rules regulating the time in which union members may resign, even where such rules—as here—have no impact on the employment relationship. *Pattern Makers* undoubtedly upholds the NLRB's invalidation of union-imposed fines in the face of resignations from union membership, even where those resignations are untimely under the union's constitution. But *Pattern Makers* does not hold that Section 8(b)(1)(A) may be read to invalidate all union resignation rules themselves, even absent any union conduct affecting the employment rights of those who attempt to resign from the union. As this Court has repeatedly held, Congress did not intend mere internal enforcement of union rules to be barred by Section 8(b)(1)(A).

Union resignation rules—such as UAW's here—are designed to do more than preserve a union's ability to discipline members in strike situations, the problem addressed in each of this Court's decisions touching upon the question of resignation from union membership. Unions also maintain such rules in order to "insur[e] 'uniform practices to preserve [their] financial standing by establishing reasonable times for resignations by those who were in good standing.'" *NLRB v. International Union, UAW*, 320 F.2d 12, 16 (1st Cir. 1963). As the First Circuit held in upholding the validity of the same UAW resignation rule at issue here, "this [is] assuredly a rational basis for the [UAW's resignation] require-

ment[s]." Id. See also, *NLRB v. U.S. Postal Service*, 833 F.2d 1195, 1199 (6th Cir. 1987) (denying enforcement of NLRB order invalidating time limits for revocation of dues checkoff authorizations). Yet the Board's broad order here precludes the UAW from maintaining and enforcing its resignation rule even for such legitimate purposes. In order to resolve the important question of whether Section 8(b)(1)(A) can properly be read as supporting such a sweeping invalidation of all union resignation rules of whatever type, the Court should grant UAW's Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: June 8, 1989

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 87-5764 and 87-5809

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) and ITS LOCAL 449,
Petitioners, Cross-Respondents,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent, Cross-Petitioner.

On Petition for Review of Orders of the National Labor Relations Board, and Cross-Application for Enforcement

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Decided and Filed January 19, 1989

Before: RYAN and NORRIS, Circuit Judges; LIVELY, Senior Circuit Judge.*

LIVELY, Senior Circuit Judge. The question for decision is whether a union's restrictions on its members' right to resign their union membership violate section 8

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* The Honorable Pierce Lively became Senior Circuit Judge January 1, 1989.

(b)(1)(A) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(b)(1)(A).[1] The only enforcement provision available to the union for a member's unauthorized attempt to resign was suspension or expulsion from the union. The union could not levy a fine or impose other disciplinary sanctions except suspension or expulsion from membership. The National Labor Relations Board (the Board), agreeing with the administrative law judge (ALJ) who conducted unfair labor practice proceedings, concluded that the union violated the Act by maintaining invalid restrictions on resignation from unon membership in its international constitution. The union petitioned this court for review, and the Board filed a cross-application for enforcement of its decision and order.

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[1] Section 8(b)(1)(A) provides:

> (b) Unfair labor practices by labor organization
>
> It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

Section 157 referred to above (§ 7 of the Act) provides:

> § 157. Right of employees as to organization, collective bargaining, etc.
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

I.

A.

While a collective bargaining agreement was in force between Keystone Consolidated Industries, Inc. and the United Auto Workers International and its Local 449, the parties reached an impasse in negotiating a new agreement. When the last agreement expired, the members of the local voted to strike and the international union approved. During the strike forty-one employees submitted resignations from membership to the local. These resignations also constituted resignations from the international union. The employees then returned to work.

Thereafter, several individual union members filed internal union charges against the forty-one employees, alleging that the employees engaged in conduct unbecoming union members. The executive board of the local reviewed the charges and found them "not to be improper" under the international union's constitution. The forty-one members were notified of this finding by individual letters, but neither the local nor the international union took any further steps to process the charges or impose sanctions on the resigning members. The letters stated that the executive board had approved the charges, and advised that the charges would be "administered" as provided by the international constitution. The letters also stated:

> The charges are resigning from Local 449 UAW improperly under Article 6 of the UAW International Constitution and crossing the picket line to perform work while a strike against the employer . . . is in progress.

The provision of Article 6 referred to in the letter is Section 17, which states:

> A member may resign or terminate membership only if s/he is in good standing, is not in arrears or

delinquent in the payment of any dues or other financial obligation to the International Union or to her/his Local Union and there are no charges filed and pending against her/him. Such resignation or termination shall be effective only if by written communication, signed by the member and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year; provided, that if the employer of such member has been authorized by such member individually or by the Collective Bargaining Agreement by the employer or the Union to checkoff the membership dues of such members, then such resignation shall become effective upon the effective termination of such authorization, or upon the expiration of sixty (60) day period, whichever is later.

B.

The employer filed unfair labor practice charges against both the international and the local (hereafter UAW or the union), and the regional director of the NLRB issued a consolidated complaint. The ALJ conducted a four-day hearing and admitted numerous documents as exhibits before adjourning the hearing. He then filed a decision and recommended order.

The ALJ held that "refusal to honor a resignation tendered, without more, violates the Act." In finding that the local had received all the resignations even though some of them were sent by regular mail or were hand delivered, the ALJ stated, "the requirements of registry and/or certification and return receipt for written resignations are themselves restrictions on resignation that accomplish nothing but to make the process of resignation more difficult." On the basis of the hearing record the

ALJ further found that the union "failed and refused to honor the resignations submitted by the employees . . . and by so doing violated Section 8(b)(1)(A) of the Act."

Concluding that both the maintenance of the restrictions in the union constitution and the union's refusal to accept the employees' effective resignations from membership violated the Act, the ALJ recommended entry of a cease and desist order and an order that the union expunge Article 6, Section 17 in its entirety from its international constitution. Overruling exceptions filed by the union, the Board adopted the decision and recommended order of the ALJ, with modifications not pertinent to this appeal.

II.

The union makes three arguments in support of its position: (1) the restrictions on resignation from membership relate to the conduct of internal union affairs, and therefore are not unlawful under § (8)(b)(1)(A); (2) the common law of association validates the restrictions as properly negotiated provisions of a bilateral contract between the union and its members; and (3) even if the provision restricting the time during which a resignation may be submitted violates the Act, the Board erred in holding Article 6, Section 17 invalid in its entirety.

The Board responds by acknowledging that § 8(b)(1)(A) does not authorize interference with a union's conduct of its internal affairs. It maintains, however, that the Supreme Court has held that a union's restrictions on its members' right to resign restrain or coerce employees in the exercise of a right at the very heart of "voluntary unionism," and therefore impair a fundamental labor policy. The Board argues, further, that the UAW's inability to enforce its restrictive provisions by levying fines is immaterial; the union violated § 8(b)(1)(A) when it refused to accept the members' resignations. The Board responds to the "common law of association" argument by citing decisions that have rejected a purely con-

tractual approach to labor agreements. Finally, the Board asserts that it followed authoritative precedent by holding that the presence of *any* restriction on resignations constitutes a violation, thus rendering all of the restrictive provisions of Article 6, Section 17 invalid. In addition, the Board states that it explained its reasoning sufficiently when it adopted the ALJ's rationale for finding the entire section unlawful.

III.

The Board relies principally on one of its decisions, later cited with apparent approval by the Supreme Court, to support its position. In *International Association of Machinists & Aerospace Workers, Local Lodge 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), the Board concluded that any restriction a union may impose on resignation is invalid under § 8(b)(1)(A). *Id* at 1333. The provision of the union's constitution at issue in *Neufeld* prohibited members from resigning during strikes. The union fined a member who had submitted a resignation and returned to work during a strike.

In determining that the union violated the Act, the Board stated that it was following a number of Supreme Court decisions, particularly *Scofield v. N.L.R.B.*, 394 U.S. 423 (1969). *Scofield* discussed and refined the distinction between union rules that affect only the internal operations of a union and those that affect its external operations, a distinction which the Court had previously drawn in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). The charge against the union in *Scofield* complained of fines and suspensions from membership imposed as discipline against members who exceeded an agreed production ceiling. In holding that the union had not violated § 8(b)(1)(A), the Court stated that Congress, in enacting § 8(b)(1)(A), did not seek to regulate internal union affairs except for "barring enforcement of a union's internal regulations to affect a member's

employment status." *Scofield*, 394 U.S. at 428 (quoting *Allis-Chalmers*, 388 U.S. at 195). While provisions for fines or expulsion for violating internal union rules are generally enforceable, "if the rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating § 8(b)(1)." *Scofield*, 394 U.S. at 429. In summary the Court stated that

> § 8(b)(1) leaves a union free to enforce a properly adpted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

Id. at 430.

Applying *Scofield*, the Board found a violation of § 8(b)(1)(A) in *Neufeld* for a number of reasons. First, it concluded that union restrictions on members' right to resign impair the fundamental labor policy expressed in § 7 of the Act, 29 U.S.C. § 157, which "expressly grants employees 'the right to refrain from any or all' protected concerted activities." 270 NLRB at 1333. Second, the Board determined that such restrictions impair the fundamental labor policy of "voluntary unionism" expressed in the Act. *Id.* Third, the Board found that the restrictions "artificially expand []" the distinction between internal and external enforcement of union rules "[b]y unilaterally extending an employee's membership obligation." *Id.* In addition the Board found that the union's enforcement of its rule against the Neufeld employees was contrary to the *Scofield* limitation that a union may enforce a rule only against members who are "free to leave the union and escape the rule." *Id.* at 1334 (quoting *Scofield*, 394 U.S. at 430).

In *Pattern Makers' League v. N.L.R.B.*, 473 U.S. 95 (1985), the Supreme Court considered a union constitu-

tion that prohibited resignations during a strike or when a strike is imminent. The union fined ten employees who resigned and returned to work during a strike. The Board held that the fines were imposed in violation of § 8(b)(1)(A), and the Seventh Circuit enforced the order. 724 F.2d 57 (1983). The Supreme Court granted certiorari "to decide whether § 8(b)(1)(A) reasonably may be construed by the Board as prohibiting a union from fining members who have tendered resignations invalid under the union constitution." *Id.* at 96-97. After discussing the court of appeals decision, the Court restated its reason for granting review, declaring it was "to resolve the conflict between the Courts of Appeals over the validity of restrictions on union members' right to resign." *Id.* at 100. The imposition of fines was not mentioned.

The Court then acknowledged the deference due the Board's interpretation of the Act in view of its "special competence' in the field of labor regulations" and concluded that the narrow issue on review was "whether the Board's construction of § 8(b)(1)(A) is reasonable." *Id.* The Court noted the Board's treatment of § 8(b)(1)(A) in *Neufeld*, particularly the Board's conclusion that union restrictions on the right to resign conflict with the policy of voluntary unionism. Immediately following a citation to *Neufeld* the Court stated: "We believe that the inconsistency between union restrictions on the right to resign and the policy of voluntary unionism supports the Board's conclusion that [the Pattern Makers' restriction] is invalid." *Id.* at 105.

The union urges us to interpret *Pattern Makers'* narrowly. It argues that the union's action in that case violated § 8(b)(1)(A), not because the union maintained a constitutional restriction on the right to resign, but because it levied heavy fines against the members who attempted to resign. By imposing these fines, the union contends, the Pattern Makers' union went beyond the reg-

ulation of internal union affairs and affected the employment relationship. Article 6, Section 17, on the other hand, does nothing more than promote solidarity, a legitimate union objective. Without the imposition of fines, the union maintains, the constitutional restrictions do not vitiate "the strictly internal character of the union rules." The union argues that, as in *Pattern Makers'*, the issue of union-imposed fines was also central to the Board's decision in *Neufeld*.

IV.

A.

The Supreme Court divided five to four in *Pattern Makers'*, with three of the dissenting justices finding no support for the majority's decision "in either the language of §§ 7 and 8(b)(1)(A) of the National Labor Relations Act on which the Court purports to rely, or in the general goals of the Act, which it ignores." 473 U.S. at 117-18 (Blackmun, J., dissenting). In addition to joining in Justice Powell's majority opinion, Justice White filed a separate concurring opinion. He discussed the "proviso" in § 8(b)(1)(A) ("*Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein"), and concluded that it could be read either of two ways. It could be read as permitting restrictions on resignations during a strike as rules related to the "retention" of membership. On the other hand, it could "be sensibly read to refer only to the union's right to determine who shall be allowed to join and to remain in the union." *Id.* at 116 (White, J., concurring). Applying the rule of deference, Justice White accepted the Board's adoption of the second interpretation. "Where the statutory language is rationally susceptible to contrary readings, and the search for congressional intent is unenlightening, reference to the Board is not only appropriate, but necessary." *Id.* at 117.

In *N.L.R.B. v. International Brotherhood of Electrical Workers, Local 340*, —— U.S. ——, 107 S. Ct. 2002 (1987), the Court examined the application of § 8(b)(1)(A) to a union's disciplining of members for continuing to work for employers who did not have collective bargaining agreements with the union. In determining that the union had not violated the Act by imposing fines, the Court stated that *Pattern Makers'* had decided "that union members have a right to resign from a union *at any time* and avoid imposition of union discipline." 107 S. Ct. at 2015 (emphasis in original).

B.

This court has had no occasion to apply *Pattern Makers'* to a union restriction on members' right to resign. We have relied on *Pattern Makers'* as establishing the high degree of deference due the Board's interpretation of the Act. *Vokas Provision Co. v. N.L.R.B.*, 796 F.2d 864, 868 (6th Cir. 1986); *N.L.R.B. v. United States Postal Service*, 833 F.2d 1195, 1197 (6th Cir. 1987). In *Postal Service* we described *Pattern Makers'* as holding that "a union could not use monetary fines to burden a member's right to resign." *Id.* at 1201. This statement does not require us to accept the union's argument that *Pattern Makers'* must be given a narrow reading that confines its application to cases where a fine has been imposed for attempting to resign in contravention of union rules.

The quoted statement in *Postal Service* is dicta. Before making this statement, the court had already declined to base its decision on *Pattern Makers'* because the Board had not relied on that decision or its reasoning. In an "even if" comment the court noted the inapplicability of *Pattern Makers'* to the case it was deciding. Unlike the union members in *Pattern Makers'*, members of the postal workers' union were free to leave the union at any time. The absence of fines for violation of a union rule distinguished *Postal Service from Pattern Makers'*. The more

critical distinction, however, was that the policy of voluntary unionism—"the underlying rationale of the decision [in *Pattern Makers*']"—was not violated by the rule under consideration in *Postal Service*. 833 F.2d at 1201. That rule did not coerce or restrain members in the exercise of their § 7 right to refrain from continued union membership. It should also be noted that the union did not contest that portion of the Board's order in *Postal Service* finding that the union committed an unfair labor practice by refusing to permit two members to resign. 833 F.2d at 1196 n.1. Thus, the issue in the present case clearly was not before this court in *Postal Service*.

The Seventh Circuit has applied *Pattern Makers*' to facts quite similar to those in the present case. The union constitutional provision under scrutiny in *N.L.R.B. v. Local 73, Sheet Metal Workers*, 840 F.2d 501 (7th Cir. 1988), prohibited acceptance of resignations offered in anticipation of charges being preferred agaist the member, during the pendency of such charges, or during a strike or lockout. The Board found that the union's maintenance of this restriction in its constitution restrained and coerced members in violation of § 8(b)(1)(A). The union made virtually the same arguments in *Sheet Metal Workers* that the UAW makes in the present case. It argued that *Pattern Makers*' should be given a narrow reading, that the Board's interpretation of § 8(b)(1)(A) in *Neufeld* was unreasonable, and that the restriction was valid under the common law of association.

In a careful and well-reasoned opinion Judge Cudahy concluded that the Board's interpretation of the Act was reasonable and that *Pattern Makers*' provided the rationale for upholding the Board's determination that the restriction on union members' right to resign "restrains and coerces members in violation of section 8(b)(1)(A) and impairs the statutory policy of voluntary unionism." *Id.* at 508. The court also rejected the union's argument that holding the restriction on resignations invalid was contrary to the common law of association. The court

pointed out that *Pattern Makers'* had rejected a similar argument. *Id.* See 473 U.S. at 112-14.

We agree with the Seventh Circuit and will affirm the holding of the Board that Article 6, Section 17 violates § 8(b)(1)(A) insofar as it permits resignation only if a member "is in good standing, is not in arrears or delinquent in the payment of dues or other financial obligation and there are no charges filed and pending against her/him." The provision that resignation is effective only if sent by registered or certified mail within ten days prior to the end of the fiscal year of the local union also violates the Act. All of these provisions restrain and coerce the members in the exercise of their right to abstain from union membership and collective activity. As the ALJ stated, these restrictions serve no legitimate purpose; they only make it difficult for a member to exercise the right to withdraw from the union. The Board's findings and conclusions with respect to these features of Article 6, Section 17 are reasonable and entitled to deference. Furthermore, the rationale for these findings and conclusions is sufficiently set forth in the ALJ's decision, which the Board adopted. Thus, we will enforce the order to the extent that it directs the union to expunge the above restrictions from Article 6, Section 17.

Neither the ALJ nor the Board discussed the requirement that a member's resignation be in writing and sent to a designated officer of the local union. On its face, we can discern nothing in this requirement that could reasonably be construed as restraining or coercing members in the exercise of their § 7 rights. On the other hand, these requirements serve the legitimate purpose of enabling the union to maintain an accurate membership roll. Therefore, we will not enforce that portion of the order directing the union to expunge these provisions of Article 6, Section 17.

The decision of the Board is affirmed, and its order is enforced except to the extent indicated herein.

DJS

283 NLRB No. 30

D—4311
Rockford, IL

UNITED STATES OF AMERICA BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 33—CB—2043

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

Case 33—CB—2044

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW)

and

NATIONAL METALCRAFTERS, INC.

DECISION AND ORDER

On 31 January 1985 Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondents filed exceptions and a joint supporting brief and the Charging Party filed cross-exceptions. The General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to

affirm the judge's rulings, findings, and conclusions, as modified,[1] and to adopt the recommended Order.[2]

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[1] As noted by the judge, the Respondent Local's executive board, by letter sent 2 November 1983, notified the employees that it had "approved" the internal union charges filed concerning their resignations and that such charges would be "administered" under the International constitution. The judge concluded that the letter did not violate Sec. 8(b)(1)(A) of the Act. While we do not find a separate violation of Sec. 8(b)(1)(A) based on the letter, we note, as the judge found that the letter was the first and we conclude that the letter was part and parcel of the Respondent's unlawful refusal to accept the employees' resignations from union membership.

We also disagree with the judge's finding that the evidence does not establish that the Respondent Local's executive board is an agent of the Respondent International Union. The executive board represents the Respondent Local between membership meetings when urgent business so requires and, as found by the judge, for the purpose of receiving resignations the executive board is clearly an agent of the Local. Since, as the judge also found, the Local is an agent of the International it follows that the executive board is also an agent of the Respondent International Union.

In affirming the judge, we find it insignificant that the constitutional provision restricting resignations cannot be enforced by the imposition of fines. In *Sheet Metal Workers Local 73 (Safe Air)*, 274 NLRB 374 (1985), we reaffirmed our holding in *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), approved by the Supreme Court in *Pattern Makers v. NLRB*, 105 S.Ct. 3064 (1985), that *any* restriction on resignation from union membership is invalid, irrespective of the period of restriction, and that the mere maintenance of a constitutional provision restricting resignation restrains and coerces employees from exercising their Sec. 7 rights. Since the Respondents in this case have maintained a provision restricting the submission of resignations to a 10-day period, we agree that they have violated Sec. 8(b)(1)(A) and that the entire provision as it pertains to the restrictions is invalid.

[2] The judge also ordered the Respondents to expunge from the constitution of the International Union and any other of the governing documents of Local 449 and/or the International in which it may appear, art. 6, sec. 17, of the constitution of the International Union. We agree. See *Auto Workers Locals 73 & 1093*

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Local 449, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), their officers, agents, and representatives, shall take the action set forth in the Order.

Dated, Washington, D.C. 5 March 1987

DONALD L. DOTSON,
Chairman

WILFORD W. JOHANSEN,
Member

JAMES M. STEPHENS,
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

(McDonnell Douglas), 282 NLRB No. 64 (Dec. 18, 1986), where we ordered expunction of the same provision and in doing so elaborated on the reasoning of *Neufeld*, supra.

JD-28-85
Rockford, IL

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

Case 33-CB-2043 [1]

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

and

Case 33-CB-2044

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

and

NATIONAL METALCRAFTERS, INC.

Barbara S. Van Auken, Esq., for the General Counsel.

Robert C. Long, Esq., for the Charging Party.

Michael B. Nicholson, Esq., and *Ann C. Hodges, Esq.*, for Respondent Union.

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[1] The transcript of record, which reflects the case numbers to be 30-CB-2043 and 30-CB-2044 should be corrected wherever the error appears to read 33-CB-2043 and 33-CB-2044.

DECISION

Statement of the Case

CLAUDE R. WOLFE, Administrative Law Judge: This consolidated proceeding was litigated before me at Rockford, Illinois, on October 18, 19, 22 and 23, 1984, pursuant to charges filed and served on November 14, 1983 and a consolidated complaint issued on January 30, 1984, and amended both before and at hearing, which alleged that both Respondent Unions (Local 449 and the International) have maintained an unlawful restriction on members' rights to resign their union membership; have unlawfully refused to honor or accept such resignations tendered to them; and have unlawfully threatened resigning employees with internal union charges for crossing a picket line. Local 449 and the International deny the commission of unfair labor practices, and advance the affirmative defenses that the complaint is barred by Section 10(b) of the Act, the doctrine of laches, and the doctrine of *res judicata* and/or collateral estoppel.

Upon the entire record,[2] and after considering the testimonial demeanor of the witnesses and the post-trial briefs, I make the following:

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[2] The official transcript of proceedings should be, and hereby is, corrected in the following particulars:

page	line		from	to
69	14		not	now
97	15		et non solemno	idem sonans
145	15		in fieri	enthymeme
226	20		will tell	will not tell
336	8		job	shop
360	4		days	weeks
360	10		substance of	substantive
411	20		demur	denude
438	13	(and wherever else it appears)	Luther	Reuther
484	24		ask in	in the absence of an
487	14		gives	gets
487	15		ruling this	a ruling is

Findings and Conclusions

I. Jurisdiction and Labor Organizations

The pleadings establish that the employer involved herein meets the Board's jurisdictional standards and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Local 449 and the International are each a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. *Relevant Facts and Law*

Local 449 and the International were each a signatory party to a collective-bargaining agreement covering the production and maintenance employees of Keystone Consolidated Industries, Inc., of which the charging party is a division, who are employed at Rockford, Illinois plants, including that of the charging party. The agreement expired on April 13, 1983, by its terms, but was extended through April 16, 1983, by agreement of all parties to the contract. No new agreement was reached and a strike was voted for by members of Local 449 and authorized by the International. A picket line was established and the strike and picketing of the Rockford plants previously referred to commenced on or about April 19, 1983, and was continuing at the time of the hearing.

During the strike employees submitted resignations from union membership. The Constitution of the International Union adopted May 1983 and the previous one adopted June 1980 contain an identically worded section, denominated Article 6, Section 17 in both, reading as follows:

> A member may resign or terminate membership only if s he is in good standing, is not in arrears or delinquent in the payment of any dues or other fi-

> nancial obligations to the International Union or to her/his Local Union and there are no charges filed and pending against her/him. Such resignation or termination shall be effective only if by written communication, signed by the member and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year; provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and the Union to check off the membership dues of such member, then such resignation shall become effective upon the effective termination of such authorization, or upon the expiration of such sixty (60) day period, whichever is later.

The bylaws of Local 449 expressly provide: "The Constitution of this organization shall be the Constitution of the International Union, UAW, and these By-Laws shall be in all respects subordinate to said Constitution and all applications and interpretations thereof." The testimony before me established that Local 449, as this quotation provides, does indeed conduct its affairs in accord with the provisions of the International Constitution, and looks to that document for guidance in so doing.

The maintenance of Article 6, Section 17 by the International and Local 449 is a violation of Section 8(b)(1)(A) because it places unlawful restrictions on union members' right to resign. The Board has recently held that union members have a right to resign from membership, and a union cannot lawfully restrict that right. The restrictions on resignation set forth in Article 6,

Section 17 of the unions' constitution are therefore invalid under *International Association of Machinists, Local 1414 (Neufeld Porsche-Audi, Inc.)*, 270 NLRB No. 209 (1984), and the mere maintenance of such restrictions violates Section 8(b)(1)(A) of the Act. *Engineers and Scientists Guild (Lockheed-California Company)*, 268 NLRB No. 42 (1983); *International Typographical Union (Register Publishing Co.)*, 270 NLRB No. 213 (1984).

The complaint alleges that Local 446 and the International have refused to honor or accept resignations from the members named below because those resignations did not comply with Article 6, Section 17 of the International Constitution.[3] Set forth after each employees' name in the first column of dates (column A), is, in most cases, the postmark date on his or her letter to Local 449 notifying Local 449 of the senders' desire to resign or, as some writers put it, withdraw from union membership. The date following Robert Bartell's name is the date of mailing to which he credibly testified. There was no proffer of any letter of resignation from Gary Hare or Jody Wills. Although Local 449 has letters of resignation in its possession from Gerald Cole and Don Smith, they are not dated. The postmark on Rudi Sobirai's envelope containing his letter of resignation is unreadable, thus the date on the letter appears after his name. With respect to Joe Avendano, Leonard Forsell, Patrick Horkheimer, Andrew Larson, Pat Smith and Charles Wood-

[3] The fact that the resigning members submitted their resignations in writing, and many by certified mail return receipt requested, persuades me they were aware of the constitution's requirements, but whether or not members had sufficient notice would make no difference in this case because the restrictions on resignation in Article 6, Section 7 of the International Constitution are invalid and unenforceable. *St. Louis Newspaper Guild (Pulitzer Publishing Co.)*, 272 NLRB No. 193 (1984); *Newspaper Guild of New York, Local 3 (New York, News, Inc.)*, 271 NLRB No. 192, fn. 8 (1984).

ard, no envelopes were produced for their letters of resignation, and I have therefore set down after their names the dates they wrote on the letters. The letter of Larry Hare was mailed to National Metalcrafters, but was in Local 449's possession at time of hearing. Perry Wilhite resigned by telegram. Date column B contains the dates of rehire [4] for these employees.

	A	B
	Dates of Resignation letters or mailing dates	Rehire date
Joe Avendano	5/20/83	5/23/83
Robert Bartell	9/27/83	9/27/83
Roger Bougord	5/20/83	5/23/83
Teri Casas	5/4/83	5/2/83
Julie Chorak	4/30/83	5/2/83
Gerald Cole	undated	7/5/83
Dan Cooper	10/7/83	10/10/83
Harold Cooper	9/30/83	10/3/83
Darrell Danekas	5/2/83	5/2/83
Roy Davis	4/30/83	5/2/83
Mary Ferdon	5/2/83	5/2/83
Leonard Forsell	9/6/83	9/6/83
Larry Gulley	5/31/83	5/31/83
Billy Haggard	4/30/83	5/2/83
Koren Haggard	4/30/83	5/2/83
Gary Hare	none	5/2/83
Larry Hare	4/30/83	5/2/83
Dave Hawkins	10/24/83	10/24/83
Sheila Hoffman	4/30/83	5/2/83
Patrick Horkheimer	9/29/83	9/29/83
Virginia Hunt	5/2/83	5/2/83
Andrew Larson	9/7/83	9/8/83
Jaunita Lawrence	4/30/83	5/2/83
Lawrence Lewis	5/3/83	5/2/83
Wesley Kleasner	10/7/83	10/10/83
John Marks	11/1/83	11/1/83
Wanda McClard	8/8/83	8/8/83
LaVerne Melvin	5/2/83	5/2/83
Ron Olthoff	4/30/83	5/2/83
Brenda Parham	6/8/83	6/1/83
Shirley Phillips	5/2/83	5/2/83

[4] The company's records report them as "rehire" rather than "return" or "recall."

	A Dates of Resignation letters or mailing dates	B Rehire date
Larry Shimmins	5/16/83	5/16/83
Don Siemens	8/3/83	8/4/83
Curtis Smith	5/3/83	5/2/83
Don Smith	undated	10/24/83
Pat Smith	9/27/83	9/28/83
Rudi Sobirai	8/24/83	8/29/83
Perry Wilhite	6/6/83	7/11/83
Jody Wills	none	7/5/83
Charles Woodard	8/27/83	8/29/83
Juanita Woods	5/5/83	5/2/83

Certain other members of Local 449, including its president Stanley Mayer and its vice president Jerry Fields, filed charges against all those above named except John Marks on October 3, 1983, for engaging in conduct unbecoming a member, such conduct being resigning from Local 449 improperly under Article 6 of the International Constitution and crossing the picket line to perform work while a strike against the employer was in progress. On November 2, 1983, the Executive Board of Local 449 "approved" the charges and directed tha they be administered as set forth in Article 31 of the International Constitution. One must not place too much emphasis on the use by the Executive Board of the word "approved" because other record evidence makes it clear that it does not take a position on the merit of the charges, but only certifies that the charges may be brought under existing provisions of the International Constitution. Pursuant to its "approval" of the charges, the Executive Board, on November 2, 1983, sent the following letter, on Local 449 letterhead in a Local 449 envelope, to all of the members listed above in Column A except possibly Gerald Cole and Koren Haggard:

> The Executive Board of Local 449 on November 2, 1983, approved charges filed by the Members of Local 449 against you for engaging in conduct unbecoming a member of said Local Union.

> The charges are resigning from Local 449 UAW improperly under Article 6 of the UAW International Constitution and crossing the picket line to perform work while a strike against the employer, National Metalcrafters is in progress.
>
> These charges shall be administered as per Article 31 of the UAW International Constitution.
>
> The Executive Board
> Local 449

Nine addressees [5] did not claim or open their letter and they were returned to the sender. The fact the letter was directed to all the employees named above obviously established that their resignations had then been received by Local 449.

The complaint alleges that both unions, by Local 449's Executive Board, on November 2, 1983, threatened the employees named above in Column A with internal union charges for crossing the picket lines. The threat is allegedly contained in the November 2 letter quoted above. Apart from the failure of the evidence to support General Counsel's contention that the Executive Board is an agent of the International,[6] all the letter does is advise the charged member that a charge had already been filed. The Executive Board is required by Article 31 of the International Constitution to give such notification. I

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[5] Robert Bartell, Harold Cooper, Mary Ferdon, John Marks, Curtis Smith, Donald Smith, Pat Smith, Juanita Woods, and Lawrence Melvin.

[6] The Executive Board is plainly a creature constructed by Local 449, and is its agent. Local 449 bylaws specifically provide for the Executive Board to consist of Local 449's executive officers, and specifically set forth in detail its duties. It does not act in a vacuum, as Respondents seem to suggest, but is an arm of Local 449 erected by that local for specific purposes of the local, and operating under authority delegated to it by Local 449.

cannot believe General Counsel is contending that a charged member should not be notified of the charge, and the notice of a charge already filed is hardly a threat of a charge. The letter contains nothing of a threatening nature and does not violate Section 8(b)(1)(A) of the Act.

None of the charged members have appealed the Executive Board's action set forth in its November 2 letter. Neither union has taken any further action on the charges. No fines have been imposed and none can be imposed on the charged members because a constitutional convention was held from May 15 to 20, 1983, during which the International Constitution was amended to eliminate all provisions for fining members, and to expressly set forth the only actions that can be taken against a member found guilty as charged are suspension or removal from union office or suspension or expulsion from membership.

Respondent's contention that their inability to levy fines against the resigning members is a defense is without merit. The controlling rule set forth in *Neufeld Porsche-Audi, supra*, is that a union may not place restrictions on a member's right to resign. Whether or not charges are filed or fines levied is only significant in that they may be coercive restrictions on the exercise of that right. The refusal to honor a resignation tendered, without more, violates the Act, and an issue in this case is whether there has been a refusal to honor the resignations. The resignations, as the Executive Board letter of November 12 acknowledges, reached Local 449. I am also persuaded that the filing of charges against resigning members on October 3 is evidence that resignations tendered prior to that time had been received. Many of the resignations were sent by certified mail, return receipt requested, in compliance with the directive in Article 6, Section 17 of the International

Constitution. The others were in writing,[7] but were either sent regular mail or delivered by other unspecified means including, in one case, by telegram. Local 449 received these resignations, and whether or not they were sent by registered or certified mail, or requested a return receipt, or were hand delivered would seem to be of no discernible importance to the recipient inasmuch as the registry and/or certification and return receipt provisions redound to the benefit of the sender, not the receiver, by establishing receipt of the message sent. Moreover, the requirements of registry and/or certification and return receipt for written resignations are themselves restrictions on resignation that accomplish nothing but to make the process of resignation more difficult. Finally, the Board has long held "the failure of employees to follow union rules and regulations in terminating their union membership will not deprive them of the protection of the Act where they have clearly indicated they no longer wish to remain members of the Union." *International Union, United Automobile, Aircraft, Agricultural Implement Workers of America, AFL-CIO and Local 899 (John I. Paulding, Inc.)*, 130 NLRB 1035, 1043 (1961); and see *Sales, Service, and Allied Workers Union, Local No. 80 (Capitol-Husting Company, Inc.)*, 235 NLRB 1264, 1265 (1978). For all of these reasons I conclude and find the written resignations of the employees were effective on receipt[8] and should have been honored[9] more than six months prior to the filing and

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[7] Whether or not Gary Hare or Jody Wills resigned in writing or not is not shown in the record.

[8] *Newspaper Guild of New York, Local 3 (New York News, Inc.)*, 271 NLRB No. 182, sl. op. 4-5 (1984).

[9] The letters addressed to Local 449 or its officers and mailed are presumed to have been received in the ordinary course of mail. *Communications Workers of America, Local 11500, AFL-CIO (American Telephone & Telegraph Co.)*, 272 NLRB No. 130 (1984). The presumption has not been rebutted.

service of the charges in this case, but this raises a question of statutory limitations because Section 10(b) of the National Labor Relations Act provides, in pertinent part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ." The question is whether the resignations submitted before May 14, 1983, were rejected before or after that date. The first and only communication to the resigning members with respect to their resignations was the Executive Board's letter of November 2, 1983, well within the six month period. This letter was a clear notice to the resigning members that their resignations were not being honored by Local 449. The six month limitation period under Section 10(b) does not begin to run until the alleged unlawful activity with which a respondent is charged becomes actually or constructively known to the person adversely affected. *Wisconsin River Valley District Council (Skippy Enterprises, Inc.)*, 211 NLRB 222, 227 (1974). Accordingly, I find the six month limitation period on the refusal to honor the resignations began to run on November 4, 1983, the date the November 2 letters were received, because it was on that date and by that letter the employees were first put on notice that their resignations had not been accepted. The Board recently reaffirmed that a union violates Section 8(b)(1) by refusing to acknowledge the effectiveness of its members' resignations when its bylaws contain an invalid restriction on resignation. *International Typographical (Register Publishing Co., Inc.)*, 270 NLRB No. 213 (1984). Here the restriction is in the International Constitution which contains the rules on resignation to which Local 449 adheres and on the basis of which its Executive Board concluded the charges against resigning members were properly brought. Neither the International nor Local 449 has

ever acknowledged the effectiveness of the resignations. I find that the failure to acknowledge the resignations or notify the affected employees that the effectiveness of their resignations was still in question until November 4 was not a mere oversight but a deliberate refusal to honor said resignations. Local 449 by so refusing, violated Section 8(b)(1)(A) of the Act. Inasmuch as the International Constitution and the testimony of Sam Casazza, the Sub-Regional Director of the International, establishes that a resignation from membership submitted to Local 449 also constitutes a resignation from the International, Local 449 is found to be an agent of the International for the purpose of receiving such resignations. I therefore conclude and find that the International, by its agent Local 449, failed and refused to honor the resignations submitted by the employees named hereinabove and by so doing violated Section 8(b)(1)(A) of the Act.

The evidence that Casazza is an agent of Local 449 for all purposes and Meyer an agent of the International for all purposes is not particulraly persuasive, but, for the purposes of this case, it is unnecessary to resolve that issue.

Affirmative Defenses Raised by Respondents

Respondent urges that the maintenance of the constitutional provision involved in this case for 38 years without challenge by the Board may not now be challenged due to the time limitation in Section 10(b) of the Act[10] and the doctrine of laches. It is true that the enactment of the provision long preceded the statutory limitation period and may not now be found to be an unfair labor practice. This does not, however, bar a finding that the

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[10] Section 10(b) provides, in pertinent part, that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of the charge upon the charged party.

maintenance within the period is unlawful. With respect to the laches argument it is clear, as the charging party points out, that a laches defense is inapplicable to the Board. *Mervel M. Williams*, 265 NLRB 506, 508 (1982). The defense of *res judicata* is not applicable because the issues in this case have not been litigated, and nothing substantial has been offered to support a bare claim of collateral estoppel.

The Respondents' contention that the failure of resigning members to contest the intraunion charges against them through the Union's internal appeal procedures requires dismissal of the unfair labor practice charges requires no discussion other than to say it is totally without merit. *Ventura Country District Council of Carpenters*, 259 NLRB 541, 546 (1981).

Conclusions of Law

1. The Charging Party is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 449 and the International are each labor organizations within the meaning of Section 2(5) of the Act.

3. Local 449 and the International violated Section 8(b)(1)(A) of the Act by maintaining invalid restrictions on resignations from membership.

4. Local 449 and the International violated Section 8(b)(1)(A) of the Act by refusing to accept employees' effective resignations from membership.

5. The aforesaid violations of Section 8(b)(1)(A) of the Act are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondents have not violated the Act in any other manner alleged in the complaint, as amended.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: [11]

ORDER

Respondents Local 449 and the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), their officers, agents and representatives shall:

1. Cease and desist from:

(a) Maintaining in their governing documents Article 6, Section 17, of the Constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

(b) Interfering with, restraining, or coercing employees in the exercise of right guaranteed in Section 7 of the Act, by refusing to acknowledge or accept their effective resignation from membership in Local 449 and the International.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

(a) Expunge from the Constitution of the International Union and any other of the governing documents of Local 449 and/or the International in which it may

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[11] In the event no exceptions are filed as provided in Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

appear, Article 6, Section 17, of the Constitution of the International Union.[12]

(b) Acknowledge and approve the resignations from membership received from the employees found in this decision to have tendered such resignations, give each of said employees written notification of said acknowledgement and approval, and dismiss any intraunion charges pending against any of them from crossing a picket line to work after submitting a resignation from union membership,[13] with written notification to them of said dismissal.

(c) Post at their offices and meeting halls in Rockford, Illinois, copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by each Respondents' authorized representative,

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[12] The expunction remedy in this case does not preclude UAW local unions located in Canada and serving Canadian nationals and industries, and over which the Board has no jurisdiction, from maintaining Article 6, Section 17 in their local governing documents.

[13] The dismissal of the pending intraunion charges for working *after* resigning from membership is essential in order to assure affected members such charges will not be acted upon. With respect to those members who returned to work *before* the Union received their resignations, the charges filed against them for so doing may not be found by the undersigned to have been either improperly filed or improperly considered by the Executive Board. *Newspaper Guild of New York, Local 3 (New York Times)*, 272 NLRB No. 64 (1984), but this does not alter my finding that their resignations were effective on receipt and must be approved by Respondents.

[14] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

shall be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 33 signed copies of said notice in sufficient number to be posted by the employer involved herein, if willing.

(e) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. January 31, 1985

/s/ Claude R. Wolfe
CLAUDE R. WOLFE
Administrative Law Judge

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act by maintaining in our governing documents Article 6, Section 17 of the Constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, which reads as follows:

> Section 17. A member may resign or terminate membership only if s/he is in good standing, is not in arrears or delinquent in the payment of any dues or other financial obligation to the International Union or to her/his Local Union and there are no charges filed and pending against her/him. Such resignation or termination shall be effective only if by written communication, signed by the member and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year; provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and the Union to check off the membership dues of such member, then such resignation shall become effective upon the effective termination of such authorization, or upon the effective termination of such authorization, or upon the expiration of such sixty (60) day period, whichever is later.

WE WILL NOT refuse to acknowledge or grant resignations from union membership tendered to us in writing.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL expunge from our governing documents Article 6, Section 12 of the Constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

WE WILL acknowledge and grant membership resignation requests tendered to us in writing. The resignation requests previously tendered to us in 1983 by the employees named below are hereby acknowledged and granted:

Joe Avendano	Koran Haggard	Brenda Parham
Robert Bartell	Gary Hare	Shirley Phillips
Roger Bougord	Larry Hare	Larry Shimmins
Teri Casas	Dave Hawkins	Don Siemens
Julie Cholak	Sheila Hoffman	Curtis Smith
Gerald Cole	Patrick Horkheimer	Don Smith
Dan Cooper	Virginia Hunt	Pat Smith
Harold Cooper	Andrew Larson	Rudy Sobirai
Darrell Danekas	Jauntia Lawrence	Perry Wilhite
Roy Davis	Larry Lewis	Jody Wills
Mary Ferdon	Wesley Kleasner	Charles Woodard
Leonard Forsell	John Marks	Juanita Woods
Larry Gulley	Wanda McClard	LaVerne Melvin
Billy Haggard	Ron Olthoff	

WE WILL dismiss all intraunion charges filed against members who returned to work after we received their resignations from union membership.

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

_____
(Union)

Dated _____ By _____
(Representative) (Title)

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

(Union)

Dated ——— By ———
(Representative) (Title)

This Is An Official Notice and Must Not Be Defaced By Anyone

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Savings Center Tower, 16th Floor, 411 Hamilton Boulevard, Peoria, Illinois 61602. Telephone No. (309) 671-7068.

DJB
Rockford, IL

UNITED STATES OF AMERICA BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 33-CB-2043

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

Case 33-CB-2044

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW)

and

NATIONAL METALCRAFTERS, INC.

ORDER DENYING MOTION

On 5 March 1987 the National Labor Relations Board issued its Decision and Order in this proceeding [1] adopting the judge's rulings, findings and conclusions and his recommended Order finding that the Respondents violated Section 8(b)(1)(A) of the Act by maintaining invalid restrictions from membership and by refusing to accept employees' effective resignations from membership. The Respondents were ordered to cease and desist therefrom and to take certain affirmative action necessary to remedy such unfair labor practices.

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[1] 283 NLRB No. 30.

On 7 April 1987 the Respondents filed a Motion for Reconsideration requesting the Board to reconsider and grant the Respondents' exceptions to the administrative law judge's Decision. As grounds for the Motion, the Respondents contend that the Board failed to rule on Respondents' allegations that the conduct found unlawful is not violative of the Act inasmuch as it is purely internal union activity which does not affect the employment relationship and thus is protected by the proviso to Section 8(b)(1)(A) of the Act.

Having duly considered the matter the Board finds that the Motion does not state a sufficient basis for reconsideration.

Contrary to the Respondents' assertion, the Board did consider the issues raised by the Respondents in their Motion for Reconsideration. Specifically, the Board found that any restriction on resignation from union membership is invalid and that the mere maintenance of a constitutional provision restricting resignations restrains and coerces employees from exercising their Section 7 rights. Thus, the Board finds no merit in Respondents' renewed contentions and therefore denies the Motion for Reconsideration.

IT IS ORDERED that the Respondents' Motion for Reconsideration is denied.

Dated, Washington, D.C., 2 June 1987.

By direction of the Board:

JOSEPH E. MOORE
Deputy Executive Secretary

DJS

285 NLRB No. 149

D-4684
Rockford, IL

UNITED STATES OF AMERICA BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 33-CB-2043

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

Case 33-CB-2044

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW)

and

NATIONAL METALCRAFTERS, INC.

SUPPLEMENTAL DECISION AND ORDER

On 5 March 1987 the National Labor Relations Board issued a Decision and Order affirming as modified the administrative law judge's decision finding that the Respondents violated Section 8(b)(1)(A) of the Act, and adopting his recommended Order.[1] Included in the judge's recommended Order was a provision (par. 2(b)) requiring the Respondents to "dismiss any intraunion charges pending against any of [the employees] for crossing the

[1] 283 NLRB No. 30.

picket line to work after submitting a resignation from union membership."

Subsequently, on 28 August 1987, the Board issued a Notice to Show Cause why, in light of its recent decisions in *Food & Commercial Workers Local 81 (MacDonald Meat)*, 284 NLRB No. 131 (July 17, 1987) and *Machinists Local 1233 (General Dynamics)*, 284 NLRB No. 132 (July 17, 1987), the Board should not sua sponte amend its 5 March 1987 Decision and Order to delete the above-quoted provision from the judge's recommended Order. Thereafter, on 22 September 1987, the Respondents filed a Response to the Notice to Show Cause stating that they agreed with the Board's proposed amendment.[2]

In *MacDonald Meat* and *General Dynamics* the Board found that a union may lawfully suspend or expel employees from union membership, or suspend their rights to vote or hold union office, where the employees have resigned from the union and crossed the union's picket line during a strike. In the instant case, the Union's constitution limits any discipline to suspension or expulsion from union membership, suspension or removal from union office, or a reprimand. No party has shown that any of these sanctions would be more coercive than those permitted in the *MacDonald* and *General Dynamics* cases. Accordingly, consistent with those cases, on reconsideration we find that the above-quoted portion of paragraph 2(b) of the judge's recommended Order should be deleted.

ORDER

The National Labor Relations Board orders that its previous Decision and Order is amended to:

1. Delete from paragraph 2(b) of the administrative law judge's recommended Order the words "and dismiss

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[2] In its Response to the Notice, the Respondents also again requested that the Board reconsider its underlying finding of an 8(b)(1)(A) violation. The Respondents' request is denied.

any intraunion charges pending against any of them for crossing a picket line to work after submitting a resignation from union membership, with written notification to them of said dismissal."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. 25 September 1987

WILFORD W. JOHANSEN,
Member

JAMES M. STEPHENS,
Member

NATIONAL LABOR RELATIONS BOARD

[SEAL]

CHAIRMAN DOTSON, dissenting.

For the reasons set forth in my partial dissents in *Food & Commercial Workers Local 81 (McDonald Meat)*, 284 NLRB No. 131 (July 17, 1987) and *Machinists Local 1233 (General Dynamics)*, 284 NLRB No. 132 (July 17, 1987), I would adhere to my original decision in this case and adopt the judge's recommended Order in toto.

Dated, Washington, D.C. 25 September 1987

DONALD L. DOTSON, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act by maintaining in our governing documents article 6, section 17 of the constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, which reads as follows:

> Section 17. A member may resign or terminate membership only if s/he is in good standing, is not in arrears or delinquent in the payment of any dues or other financial obligation to the International Union or to her/his Local Union and there are no charges filed and pending against her/him. Such resignation or termination shall be effective only if by written communication, signed by the member and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year; provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and the Union to check off the membership dues of such member, then such resignation shall become effective upon the effective

termination of such authorization, or upon the expiration of such sixty (60) day period, whichever is later.

WE WILL NOT refuse to acknowledge or grant resignations from union membership tendered to us in writing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL expunge from our governing documents article 6, section 12 of the constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

WE WILL acknowledge and grant membership resignation requests tendered to us in writing. The resignation requests previously tendered to us in 1983 by the employees named below are acknowledged and granted:

Joe Avendano	Koran Haggard	Brenda Parham
Robert Bartell	Gary Hare	Shirley Phillips
Roger Bougord	Larry Hare	Larry Shimmins
Teri Casas	Dave Hawkins	Don Siemens
Julie Cholak	Sheila Hoffman	Curtis Smith
Gerald Cole	Patrick Horkheimer	Don Smith
Dan Cooper	Virginia Hunt	Pat Smith
Harold Cooper	Andrew Larson	Rudy Sobirai
Darrell Danekas	Jauntia Lawrence	Perry Wilhite
Roy Davis	Larry Lewis	Jody Wills
Mary Ferdon	Wesley Kleasner	Charles Woodard
Leonard Forsell	John Marks	Juanita Woods
Larry Gulley	Wanda McClard	LaVerne Melvin
Billy Haggard	Ron Olthoff	

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

(Labor Organization)

Dated ———— By ————————————

(Representative) (Title)

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

(Labor Organization)

Dated ———— By ————————————
(Representative) (Title)

This is an official notice and must not be defaced by anyone

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Savings Center Tower, 16th Floor, 411 Hamilton Boulevard, Peoria, Illinois 61602, Telephone 309-671-7068. The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 87-5764-5809

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND ITS LOCAL 449,
Petitioners,
Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
Cross-Petitioner

ORDER

[Filed Mar. 10, 1989]

Before: RYAN and NORRIS, Circuit Judges; and LIVELY, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission

and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
LEONARD GREEN
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 87-5764 & 87-5809

Board Case Nos. 33-CB-2043,
33-CB-2044

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND ITS LOCAL 449,
Petitioners,
Cross-Respondents,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
Cross-Petitioner.

JUDGMENT

[Filed Mar. 10, 1989]

Before: RYAN and NORRIS, Circuit Judges; LIVELY, Senior Circuit Judge.*

THIS CAUSE came on to be heard upon a petition filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 449 to review an order of the National Labor Relations Board issued against said Petitioners, their officers, agents, and representatives, on March 5, 1987, as amended by supplemental order of September 25, 1987, and upon a cross-application filed

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* The Honorable Pierce Lively became Senior Circuit Judge January 1, 1989.

by the National Labor Relations Board to enforce said order, as amended. The Court heard argument of respective counsel on August 25, 1988, and has considered the briefs and transcript of record filed in this cause. On January 19, 1989, the Court, being fully advised of the premises, handed down its opinion granting in part and denying in part enforcement of the Board's Order, as amended. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that the Petitioners, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 449, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Maintaining in their governing documents Article 6, Section 17, of the Constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

(b) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act (hereinafter called the Act), by refusing to acknowledge or accept their effective resignation from membership in Local 449 and the International.

(c) In any like or related manner interfering with, restraining, coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board has found necessary to effectuate the purposes of the Act:

(a) Expunge from the Constitution of the International Union and any other of the governing documents of Local 449 and/or the International in which it may appear, Article 6, Section 17, of the Constitution of the International Union, except insofar as it requires that

resignations be in writing and sent to a designated officer of the local union.[1]

(b) Acknowledge and approve the resignations from membership received from the employees found in the Administrative Law Judge's Decision to have tendered such resignations, and give each of said employees written notification of said acknowledgement and approval.

(c) Post at their offices and meeting halls in Rockford, Illinois, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 33 of the National Labor Relations Board (Peoria, Illinois), after being duly signed by each Petitioners' authorized representative, shall be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Petitioners to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the aforesaid Regional Director signed copies of said notice in sufficient number to be posted by the employer involved herein, if willing.

(e) Notify the said Regional Director, in writing, within 20 days from the date of this Judgment, what steps the Petitioners have taken to comply herewith.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
LEONARD GREEN
Clerk
U.S. Circuit Court of Appeals
Sixth Circuit

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[1] The expunction remedy in this does not preclude UAW local unions located in Canada and serving Canadian nationals and industries, and over which the Board has no jurisdiction, from maintaining Article 6, Section 17 in their local governing documents.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING IN PART AND DENYING IN PART AN ORDER, AS AMENDED BY THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act by maintaining in our governing documents Article 6, Section 17 of the Constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, which reads as follows:

> Section 17. A member may resign or terminate membership only if s/he is in good standing, is not in arrears or delinquent in the payment of any dues or other financial obligation to the International Union or to her/his Local Union and there are no charges filed and pending against her/him. Such resignation or termination shall be effective only if by written communication, signed by the member and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year; provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and the Union to check off the membership dues of such member, then such resignation shall become effective upon the effective termination of

such authorization, or upon the expiration of such sixty (60) day period, whichever is later.

WE WILL NOT refuse to acknowledge or grant resignations from union membership tendered to us in writing.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL expunge from our governing documents Article 6, Section 12 of the Constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, except insofar as it requires that the resignations be in writing and sent to a designated official of the local union.

WE WILL acknowledge and grant membership resignation requests tendered to us in writing. The resignation requests previously tendered to us in 1983 by the employees named below are hereby acknowledged and granted:

Joe Avendano	Koran Haggard	Brenda Parham
Robert Bartell	Gary Hare	Shirley Phillips
Roger Bougord	Larry Hare	Larry Shimmins
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Darrell Danekas	Jauntia Lawrence	Perry Wilhite
Roy Davis	Larry Lewis	Jody Wills
Mary Ferdon	Wesley Kleasner	Charles Woodard
Leonard Forsell	John Marks	Juanita Woods
Larry Gulley	Wanda McClard	LaVerne Melvin
Billy Haggard	Ron Olthoff	

LOCAL 449, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

(Union)

Dated _____ By _____

(Representative) (Title)

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW)
(Union)

Date _____ By _____
(Representative) (Title)

This Is An Official Notice and Must Not Be Defaced
By Anyone

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(2)

No. 88-2006

Supreme Court, U.S.
FILED
AUG 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS ETC., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

JOSEPH E. DESIO
Acting General Counsel

D. RANDALL FRYE
Associate General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

CARMEL P. EBB
Attorney
National Labor Relations Board
Washington, D.C. 20570

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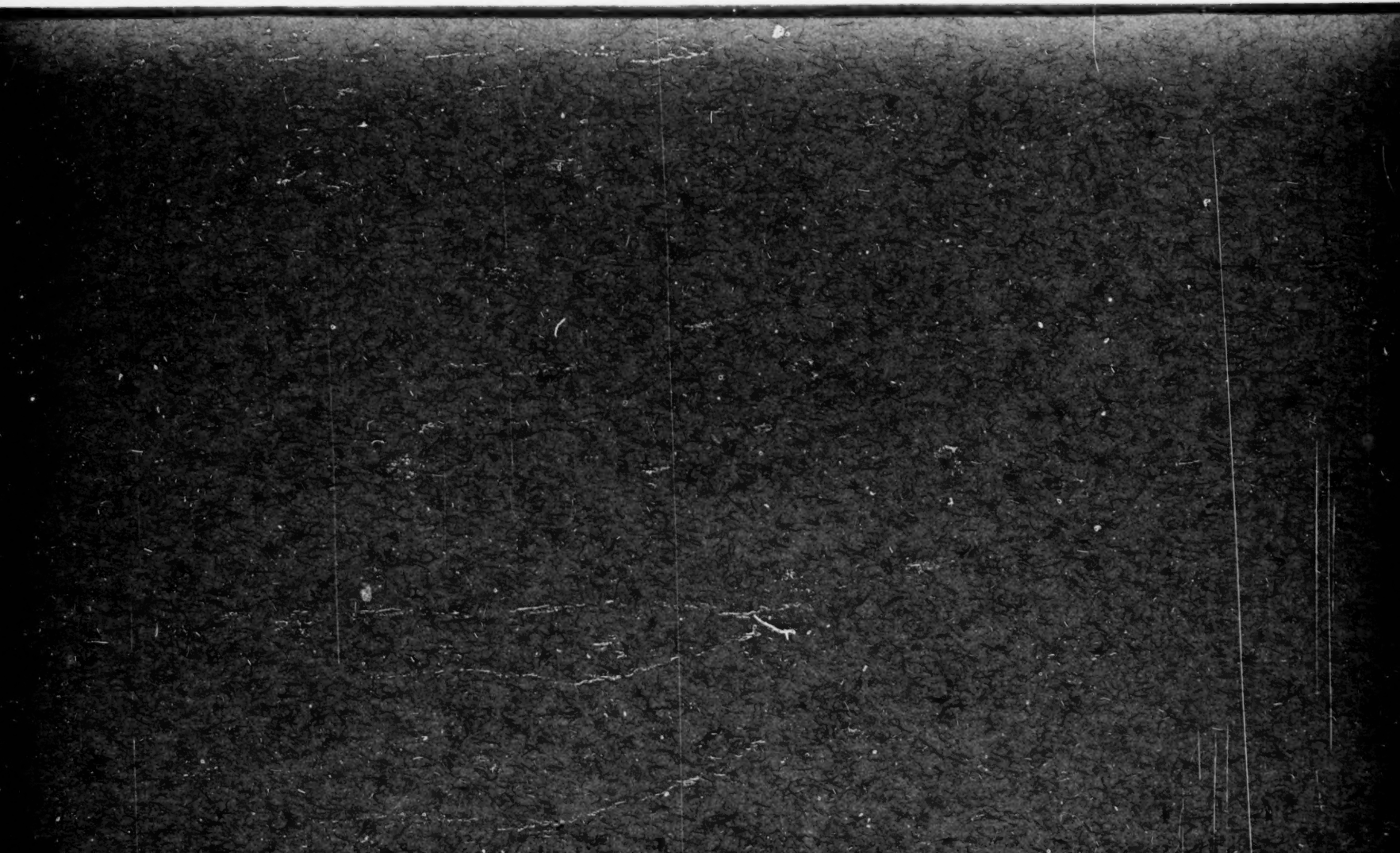

QUESTION PRESENTED

Whether the Natonal Labor Relations Board reasonably determined that petitioners violated Section 8(b)(1)(A) of the National Labor Relations Act (29 U.S.C. 158(b)(1)(A)) by imposing restrictions on resignation from union membership.

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In the Supreme Court of the United States

OCTOBER TERM, 1989

No. 88-2006

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS ETC., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 865 F.2d 791. The court's order denying a petition for rehearing en banc (Pet. App. 44a-45a) is unreported. The decision and order of the National Labor Relations Board (Pet. App. 13a-15a), including the decision of the administrative law judge, is reported at 283 N.L.R.B. 182. The Board's order denying petitioners' motion for reconsideration (Pet. App. 35a-36a) is unreported. The Board's supplemental decision and order (Pet. App. 37a-39a) is reported at 285 N.L.R.B. No. 149.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 1989 (Pet. App. 46a-51a). The petition for a

writ of certiorari was filed on June 8, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 449, maintain and enforce a rule, contained in the constitution of the International, that places restrictions on its members' right to resign from the union. The rule permits a union member to resign only if (1) the resignation is submitted during a ten-day period at the end of the local union's fiscal year; (2) the member is not in arrears in the payment of any financial obligations to the union; and (3) there are no internal union charges pending against him. The resignation must be in writing, and sent by registered or certified mail to a designated official of the local union. A resignation that satisfies these conditions becomes effective 60 days after the end of the local union's fiscal year or on the expiration of any applicable dues checkoff authorization, whichever is later. Pet. App. 3a-4a.

Petitioners were parties to a collective bargaining agreement covering employees at the Rockford, Illinois plants of the Keystone Consolidated Industries, Inc. Following expiration of the agreement in April 1983,[1] the parties reached an impasse in negotiations on a new contract, and the union called a strike. During the strike, 41 employees at the Rockford plants submitted resignations from union membership to the office of Local 449 and returned to work. Pet. App. 3a.

In October, several members of Local 449 including its president, brought internal union charges against all but one of the 41 employees, alleging that they had engaged in

[1] All dates hereafter are in 1983, unless otherwise indicated.

"conduct unbecoming a union member" by resigning without complying with the constitutional restrictions and by returning to work during the strike. The executive board of the local union found the charges "not to be improper" under the constitution, clearing the way to bring the charged employees to trial under petitioners' procedures. Pet. App. 3a, 22a-23a.[2]

Each of the charged individuals was notified of the executive board's finding, and was informed that the charges would be "administered" as provided by the International constitution. Petitioners, however, took no additional steps to process the charges or impose sanctions. Pet. App. 3a, 22a-24a.

2. The Board found that petitioners violated Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(A),[3] by maintaining the restrictions on resignation contained in the International constitution and by

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[2] The constitutional provision at the time the strike began gave the Local the power to reprimand members found guilty of the charges, to suspend or expel them from union membership, or to assess a fine not to exceed $100. At its convention in May 1983, the International amended its constitution to remove the authorization for the imposition of fines. Pet. App. 14a n.1, 24a. The administrative law judge, whose findings were adopted by the Board (Pet. App. 14a), acknowledged that, in the wake of the May 1983 amendment, "the only actions that can be taken against a member found guilty as charged [of violations of the resignation rules] are suspension or removal from union office or suspension or expulsion from membership." Pet. App. 24a.

[3] Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of rights guaranteed by Section 7 (29 U.S.C. 157), with the proviso that a union's right to prescribe its own rules with "respect to the acquisition or retention of membership" shall not be impaired.

Section 7 of the Act guarantees employees the right, inter alia, to join or assist a labor organization and the right to refrain from such activities.

refusing to accept the resignations submitted during the 1983 strike. Pet. App. 14a, 28a. The Board reiterated its holding in *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 N.L.R.B. 1330 (1984) (*Neufeld*), "that *any* restriction on resignation from union membership is invalid, irrespective of the period of restriction, and that the mere maintenance of a constitutional provision restricting resignation restrains and coerces employees from exercising their Sec. 7 rights." Pet. App. 14a n.1. The Board specifically rejected petitioners' contention that, because no fines were imposed to enforce the restrictions on resignation, there could be no violation of the Act. It adopted the administrative law judge's statement (Pet. App. 24a) that "[w]hether or not * * * fines [are] levied is only significant in that they may be coercive restrictions on the exercise of [an employee's] right [to resign from the union]." See Pet. App. 14a. The Board directed petitioners to remove the restrictions on resignation from the constitution and all other governing documents of the International and Local 449, and to accept the submitted resignations. Pet. App. 14a n.2, 29a-30a.[4]

2. The court of appeals found that the Board's interpretation of Section 8(b)(1)(A) was reasonable and, with a

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[4] The Board's original order also required petitioners to dismiss all intra-union charges brought against the employees who had crossed the picket lines (Pet. App. 30a). In a supplemental decision and order (Pet. App. 37a-39a), the Board removed that provision from its order, citing its then-recent holding in *Food & Commercial Workers Local 81 (MacDonald Meat)*, 284 N.L.R.B. No. 131 (July 17, 1987). In that decision, the Board held that a union's suspension or expulsion of members after they have resigned their union membership does not violate employees' Section 7 rights because it does not coerce them in their association with the union. Such action is therefore protected by the proviso to Section 8(b)(1)(A), see note 3, *supra*, which permits a union to prescribe its own rules.

single exception,[5] enforced the Board's order (Pet. App. 1a-12a). The court observed that the Board had followed its decision in *Neufeld,* in which it held that any restriction a union imposes on resignation is invalid under Section 8(b)(1)(A). The court also noted that *Neufeld* had been cited with apparent approval by this Court in *Pattern Makers' League of North America* v. *NLRB*, 473 U.S. 95, 103, 105 (1985) (*Pattern Makers'*), in upholding the Board's decision that a union violated Section 8(b)(1)(A) by imposing fines on union members who resigned and returned to work during a strike. Pet. App. 6a-7a.

The court of appeals rejected petitioners' contention that this Court's finding of a violation of Section 8(b)(1)(A) in *Pattern Makers'* was based not on the Union's maintenance of a "constitutional restriction on the right to resign," but on the fact that the union "levied heavy fines against the members who attempted to resign." Pet. App. 8a. The court noted (Pet. App. 11a-12a) that the Seventh Circuit had applied *Pattern Makers'* in analyzing restrictions similar to those contained in petitioners' constitution, and had concluded that, despite the fact that no fine was imposed, the union in that case had violated the Act by impeding the employees' right to resign. See *NLRB* v. *Local 73, Sheet Metal Workers' Int'l Ass'n,* 840 F.2d 501 (7th Cir. 1988). The court agreed with the Board's view that the resignation restrictions in petitioners' constitution impaired " 'the statutory policy of voluntary unionism' " (Pet. App. 11a, quoting *Sheet Metal Workers'*

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[5] The court noted that "[n]either the ALJ nor the Board discussed the requirement that a member's resignation be in writing and sent to a designated officer" of the Union. The court declined to enforce the order directing the Union to eliminate these requirements, finding that they did not, on their face, "restrain[ ] or coerc[e] members" in violation of Section 7 of the Act, and that they served a legitimate union recordkeeping purpose. Pet. App. 12a.

Int'l Ass'n, 840 F.2d at 508) and upheld the Board's determination that the union violated Section 8(b)(1)(A) by maintaining and enforcing those restrictions.

ARGUMENT

The court of appeals in this case appropriately deferred to the decision of the Board, which was reasonable and consistent with the decisions of this Court and other courts of appeals. The Board applied its holding in *Neufeld,* 270 N.L.R.B. 1330 (1984), to conclude that the Union's restrictions on resignation violated Section 8(b)(1)(A) of the Act. And the court of appeals held that the Board's interpretation of Section 8(b)(1)(A) was reasonable and consistent with this Court's decision in *Pattern Makers'.* The two other courts of appeals that have struck down similar restrictions on resignation have endorsed the Board's decision in *Neufeld* and agreed with the Board's view of *Pattern Makers'* as expressed in that decision. See *NLRB* v. *Local 73, Sheet Metal Workers' Int'l Ass'n,* 840 F.2d at 504-505; *NLRB* v. *Sheet Metal Workers Int'l Ass'n, Local 16,* 873 F.2d 236, 237 (9th Cir. 1989). Further review is therefore unwarranted.

1. In *Neufeld,* the Board held that "*any* restrictions placed by a union on its members' right to resign" violate Section 8(b)(1)(A) of the Act and are unlawful. 270 N.L.R.B. at 1333 (emphasis added). The Board analyzed resignation restrictions under a three-part test propounded by this Court in *Scofield* v. *NLRB,* 394 U.S. 423 (1969): a union rule is valid if it "reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Id.* at 430. The Board concluded that rules impeding a worker's right to resign at will fail the second and third parts of

this test. The Board found, first, that resignation restrictions restrain members in the exercise of their Section 7 right to refrain from any and all concerted activities. Section 7 protects "not only the right to refrain from strikes but also the right to resign union membership." *Neufeld,* 270 N.L.R.B. at 1333. Second, the Board found that, by compelling a member to maintain full union membership, resignation restrictions collide with the statutory policy of voluntary unionism implicit in Sections 8(a)(3) and 8(b)(2) of the Act, 29 U.S.C. 158(a)(3) and 158(b)(2). *Neufeld,* 270 N.L.R.B. at 1333. Third, the Board found that resignation restrictions would "impair the fundamental policy repeatedly recognized by the Supreme Court" in distinguishing between permissible "internal union actions" and proscribed "external union actions" by permitting the "artificial[ ] expans[ion of] the definition of internal actions" (*ibid.*). For it is only by virtue of the rule forcing employees to remain in the union that the union is able to regulate employee conduct over which it would otherwise have no control. See *ibid.*

The Board in *Neufeld* also explained that resignation restrictions could not be justified under the proviso to Section 8(b)(1)(A), which safeguards a union's right to prescribe its own rules about the acquisition and retention of membership. "[W]hile a union can enact and enforce [membership] rules that are internal in scope and target, it possesses no statutory authority to impose its will on employees who exercise their Section 7 right to resign and thereby refrain from concerted activity." 270 N.L.R.B. at 1335. And finally, with reference to the *Scofield* requirement that a union rule must be reasonably enforced against union members who are "free to leave the union and escape the rule," the Board believed it to be self-evident that this principle is violated by a rule that tells

members that they are not, in fact, free to leave the union. *Id.* at 1334.

2. Petitioners claim that the Board's holding is inconsistent with this Court's decisions in *Pattern Makers'* and in *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). See Pet. 7-10. They rely on the distinction drawn in *Allis-Chalmers* between "internal and external enforcement of union rules," and the Court's statement in that case that Congress did not intend Section 8(b)(1)(A) "to interfere with the internal affairs or organization of unions." 388 U.S. at 187 (citation and emphasis omitted). They claim that *Pattern Makers'*, while establishing that a union violates the Act by imposing fines for improper resignation, reaffirmed the *Allis-Chalmers* holding that regulations not affecting union members' employment status are permissible "internal" rules. They maintain that, because the UAW cannot levy fines against members who resign in defiance of union rules, and because the resignation restrictions at issue here do not otherwise affect members' employment status, the restrictions represent permissible "internal" union rules.

This contention is in error. Indeed, both *Allis-Chalmers* and *Pattern Makers'* lend strong support to the Board's holding in this case. In *Allis-Chalmers*, the Court held that a union did not commit an unfair labor practice by fining members for crossing a picket line (and suing in state courts to collect the fines), but placed great stress on the fact that "the fined employees involved herein enjoyed *full union membership.*" 388 U.S. at 196 (emphasis added). The employees in question had made no effort to resign from the union before or after committing the violations of union rules for which they were fined. The Court's decision in *Pattern Makers'* was a natural corollary of *Allis-Chalmers*. Although a union has authority to impose sanctions on its *current* members, it cannot restrict their Sec-

tion 7 right to resign from membership and thus to remove themselves from the union's machinery for internal discipline.

The facts of *Pattern Makers'* involved the imposition of fines for improper resignation, but the principle on which the decision rested was not limited to those facts. To the contrary, the Court stressed that there is an "inconsistency between union restrictions on the right to resign and the [Act's] policy of voluntary unionism" (473 U.S. at 105), and stated that the Act protects the employees' right "to resign from a union at any time," 473 U.S. at 106. The Court also cited with approval the Board's decision in *Neufeld,* in which the Board had unequivocally embraced the principle that "*any* restrictions placed by a union on its members' right to resign * * * are unlawful." 270 N.L.R.B. at 1333 (emphasis added). See 473 U.S. at 105. The Court thus accepted the Board's judgment in *Neufeld* that union rules that significantly impede resignation, thereby compelling members to retain full membership, are incompatible with the statutory policy of voluntary unionism. 473 U.S. at 104-107.

Finally, the Court in *Pattern Makers'* agreed with the Board's conclusion in *Neufeld* that Congress's decision to include a proviso in Section 8(b)(1)(A) that would enable unions to preserve control over their internal affairs "does not suggest an intent to authorize restrictions on the right to resign" (473 U.S. at 102 (citing *Neufeld,* 270 N.L.R.B. at 1333)), in that "union constitutional provisions restricting the right to resign were uncommon, if not unknown [in 1947]." 473 U.S. at 103 (footnote omitted). Indeed, the Court noted that neither it nor the Board had "ever interpreted the [Section 8(b)(1)(A)] proviso as allowing unions to make rules restraining the right to resign." 473 U.S. at 108-109. The Court found that the Board had reasonably interpreted the phrase "rules with respect to the acquisition

or retention of [union] membership" as encompassing "union rules involving admission and expulsion," but not "rules restricting the right to resign" (*ibid.*; see also *id.* at 116 (White, J. concurring)).[6]

3. Contrary to petitioners' contention (Pet. 9), the rule restricting resignation from union membership can have a coercive impact on employees in the exercise of their Section 7 right to resign even though the only sanction for violation of the rule is "reprimand or suspension or expulsion from union office or union membership" rather than a court-enforceable fine. As the Board explained in *Engineers & Scientists Guild (Lockheed-California Co.)*, 268 N.L.R.B. 311 (1983), the mere maintenance of a constitutional provision restricting resignations "restrains and coerces employees, who may be unaware of the provision's unenforceability, from exercising their Section 7 rights." Its effect is "analogous to the effect of an * * * overly broad no-solicitation rule," which, under settled law, tends to restrain and coerce employees whether or not it is enforced. *Id.* at 311 & n.3.

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[6] Nor is it material, as petitioners contend (Pet. 11), that the rule here may serve a legitimate union interest. The rule barring resignations during a strike in *Pattern Makers'* advanced the legitimate union interest of preserving solidarity in a strike; yet, that was not sufficient to privilege the rule. As noted above, a union rule that "reflects a legitimate union interest" satisfies only one part of the *Scofield* test; the rule may nevertheless be found to be invalid if it fails the remaining parts of the test—as petitioners' rule does—by violating workers' rights to refrain from union participation.

To the extent that *NLRB* v. *International Union, UAW*, 320 F.2d 12 (1st Cir. 1963) (Pet. 11), holds to the contrary, the conflict is immaterial because that decision was superseded by this Court's subsequent decisions in *Scofield* and *Pattern Makers'*.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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